

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Food Lion, LLC, and Maryland and
Virginia Milk Producers Cooperative
Association, Inc.,

Plaintiffs,

v.

Dairy Farmers of America, Inc.,

Defendant.

Case No. 1:20-cv-00442

**DEFENDANT DAIRY FARMERS OF AMERICA, INC.'S MOTION FOR
PROTECTIVE ORDER AS TO PLAINTIFFS' SECOND REQUESTS
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Federal Rule of Civil Procedure 26(b), Defendant Dairy Farmers of America, Inc. ("DFA"), by and through its undersigned counsel, hereby moves for a protective order providing that DFA need not respond to Plaintiffs' Requests for Production Nos. 25 through 27, 29, 31, and 40 through 50, and to grant such other relief as it deems necessary and appropriate. In support of this motion, DFA shows the Court as follows:

1. On July 29, 2020, Plaintiffs Food Lion, LLC ("Food Lion") and Maryland and Virginia Milk Producers Cooperative Association, Inc. ("MDVA") served their Combined Second Requests for Production of

Documents (the “Second RFPs”) on DFA. The Second RFPs contained 46 document requests.

2. On August 18, 2020, DFA requested a meet-and-confer regarding the Second RFPs, and the parties held a telephonic meet-and-confer on August 20, 2020.

3. During the meet-and-confer, Plaintiffs agreed to consider modifying six requests, and the parties agreed to table their discussion of some of the other requests pending DFA’s service of its formal objections and responses and further negotiations between the parties. As to a dozen of the Second RFPs, however, the parties remained at an impasse.

4. DFA sent a follow-up letter to the meet-and-confer on August 24, 2020. On August 26, 2020, the day that DFA’s responses were due, Plaintiffs sent an e-mail that contained a reformulation of three of the six requests they agreed to reconsider, but remained firm on the other three requests. Although Plaintiffs indicated a full response to DFA’s August 24, 2020 letter would be forthcoming, DFA has not received a response. DFA timely served its objections and responses to the Second RFPs on August 26, 2020.

5. As a result of the parties’ meet-and-confer efforts, they are currently at an impasse as to sixteen requests for production. Those 16 requests fall into six categories: 1) Requests seeking discovery of “all

documents” having to do with MDVA, its farmer members, and other non-DFA farmers **(RFP Nos. 27, 42, and 43)**; 2) requests for “all documents concerning or relating” to raw milk purchases for a non-fluid milk processing plant located in New Jersey going back to January 1, 2016, and “all documents concerning or relating” to Deans’ raw milk purchasing decisions in Kentucky and Tennessee going back to January 1, 2013 **(RFP Nos. 40 and 41)**; 3) requests for “all documents related to or used in” preparing DFA’s Answer and “all documents pertaining to, relied upon, identified, or referred to by DFA in its interrogatory responses **(RFP Nos. 49 and 50)**; 4) requests for “all documents” related to studies or analyses of the raw and fluid milk markets for a five-state area going back six years **(RFP Nos. 25 and 26)**; 5) requests for “all documents” created regarding two other dairy farmer cooperatives and a dairy marketing company **(RFP Nos. 44 through 48)**, and 6) “catch-all” requests for “all documents concerning or relating to DFA’s, Dean’s, *or any other company’s*” pricing for fluid milk and “to the extent not produced in response” to Plaintiffs’ first document requests, “documents concerning or relating to the supply of processed milk” in a five-state area **(RFP Nos. 29 and 31)**.

6. DFA seeks a protective order under Rule 26(b) because these requests are facially overbroad, disproportionate to the needs of the case, and/or fail to identify the requested documents with the sufficient particularity.

7. In further support of its motion, DFA also relies on the contemporaneously filed Declaration of Amber McDonald and the exhibits thereto.

Based on the foregoing, and for the reasons set forth in the accompanying Brief in support of this motion, DFA requests that the Court enter a protective order providing that DFA need not respond to Plaintiffs' Requests for Production Nos. 25 through 27, 29, 31, and 40 through 50, and to grant such other relief as it deems necessary and appropriate.

* * *

Date: September 1, 2020

Respectfully submitted,

BAKER & MILLER PLLC

W. Todd Miller*

Amber McDonald*

2401 Pennsylvania Avenue N.W.

Suite 300

Washington, D.C. 20037

Phone: 202-663-7820

Fax: 202-663-7849

TMiller@bakerandmiller.com

AMcDonald@bakerandmiller.com

LATHAM & WATKINS LLP

Michael G. Egge*

555 Eleventh Street, NW

Washington, DC 20004-1304

Phone: 202-637-2285

Michael.Egge@lw.com

Attorneys for

Dairy Farmers of America, Inc.

**By Special Appearance*

**WOMBLE BOND DICKINSON (US)
LLP**

/s/ Brent F. Powell

James P. Cooney III

N.C. State Bar No. 12140

Sarah Motley Stone

N.C. State Bar No. 34117

One Wells Fargo Center,

301 S College St

Suite 3500

Charlotte, North Carolina 28202

Phone: 704-331-4900

Fax: 704-331-4955

Jim.Cooney@wbd-us.com

Sarah.Stone@wbd-us.com

Brent F. Powell

N.C. State Bar No. 41938

One West Fourth Street

Winston-Salem, North Carolina 27101

Phone: 336-721-3600

Fax: 336-721-3660

Brent.Powell@wbd-us.com

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 37.1(a), I certify that after consultation and diligent attempts to resolve differences, the parties are unable to reach an accord as to the issues in dispute in this Motion for Protective Order as to Plaintiffs' Second Requests for Production of Documents. Counsel for the parties held a telephonic meet-and-confer on August 20, 2020. Brent F. Powell sent a letter to counsel on August 24, 2020 confirming the parties' positions in the meet-and-confer. Carter Simpson sent an email to Brent F. Powell on August 26, 2020 responding in part to some of the issues discussed in the August 24, 2020 letter. Plaintiffs have not otherwise responded to the August 24, 2020 letter.

/s/ Brent F. Powell

Brent F. Powell
N.C. State Bar No. 41938
WOMBLE BOND DICKINSON (US) LLP
One West Fourth Street
Winston-Salem, North Carolina 27101
Phone: 336-721-3600
Fax: 336-721-3660
Brent.Powell@wbd-us.com